



## AMENDMENTS TO RULES CONCERNING CONCENTRATED ANIMAL FEEDING OPERATIONS

#06-501(WPCB)

### Overview

The Indiana Department of Environmental Management (IDEM) proposes to amend rule language at 327 IAC 5-4-3 concerning the individual National Pollutant Discharge Elimination System (NPDES) permit and 327 IAC 15-15 concerning a NPDES general permit for concentrated animal feeding operations (CAFOs) to extend some compliance dates.

### Citations Affected

Amends: 327 IAC 5-4-3; 327 IAC 15-15-11; 327 IAC 15-15-12.

### Affected Persons

Owners and operators of CAFOs are affected by this rule.

### Reason(s) for the Rule

Under the Clean Water Act, concentrated animal feeding operations (CAFOs) are point sources subject to the National Pollutant Discharge Elimination System (NPDES) permit process. This requirement is found in the federal regulations at 40 CFR 122.23(a). The term "CAFO" is defined in 40 CFR 122. This language has been adopted in Indiana and is found in the Indiana Administrative Code at 327 IAC 5-4-3 concerning special NPDES programs. On February 28, 2005, the Federal Circuit Court of Appeals, Second Circuit, in *Waterkeeper Alliance, et al v. EPA*, vacated the requirement to apply for a permit. The United States Environmental Protection Agency (EPA) was ordered by the court to amend the federal regulation based on the court's decision. On October 31, 2005, EPA published a notice in the Federal Register (70 FR 62275) proposing to extend certain deadlines contained in the federal regulation while rule revisions required by the court are developed. In order for the Indiana rules to be consistent with EPA's stated intention to amend the federal regulations and extend the deadline, Indiana is delaying the dates for some CAFOs to submit information to become covered under the Indiana NPDES program. On August 9, 2006, the Indiana Water Pollution Control Board (board) final adopted #05-322 that contained changes to conform with EPA's Concentrated Animal Feeding Operations rule at 70 FR 62275. IDEM was concerned that EPA would not meet the July 31, 2007, deadline for publishing a final rulemaking.

On Friday, May 4, 2007, EPA proposed for public comment the extension of certain compliance deadlines for concentrated animal feeding operations (CAFOs).

One extension applies to water permit application deadlines for facilities that EPA defined as CAFOs for the first time in 2003. The other extension applies to certain CAFOs that have to develop and implement nutrient management plans (NMPs). A NMP is a plan that specifies the amount of manure that can be applied to crops so the potential for nutrient runoff to water bodies is minimized.

EPA has been regulating CAFOs for more than 25 years. In 2006, EPA proposed revisions to the CAFO rule which, when finalized, would continue to require the proper management of manure. The 2006 proposal, in response to a 2005 court ruling, would revise the National Pollutant Discharge Elimination System permitting requirements and Effluent Limitations Guidelines and Standards for CAFOs.

The proposed extensions announced are necessary to allow EPA to respond adequately to an array of public comments on issues raised in the court decision. The extensions will also provide time for the agricultural community to adjust to the new requirements once they are finalized. Additionally, EPA is encouraging states and its regional offices to continue to implement their existing regulatory programs in preparation for the final rule.

EPA is proposing to extend the dates for newly-defined CAFOs to seek permit coverage and for permitted CAFOs to develop and implement NMPs from July 31, 2007, to February 27, 2009.

The federal proposal will be published soon in the Federal Register and will be open for public comment for 30 days.

For further information, visit EPA's Animal Feeding Operations Web page:

<http://www.epa.gov/npdes/caforulechanges>

### Economic Impact of the Rule

This rule will have a low economic impact to the regulated community and to the state. The requirements are already in Federal regulations or state rules.

### **Benefits of the Rule**

The purpose of this rulemaking is to allow IDEM to meet the lengthy procedural requirements of Indiana law regarding rule promulgation and to put IDEM in a position to quickly adopt changes and/or extensions that EPA makes to the federal regulation deadline.

### **Description of the Rulemaking Project**

The rulemaking amends rule language at 327 IAC 5-4-3 concerning the individual National Pollutant Discharge Elimination System (NPDES) permit and 327 IAC 15-15 concerning a NPDES general permit for concentrated animal feeding operations (CAFOs) to extend some compliance dates.

### **Scheduled Hearings**

First Public Hearing: March 14, 2007, Indiana Government Center South, Conference Center Room A, Indianapolis, Indiana.

Second Public Hearing: June 13, 2007, Omni Room-room 250, City-County Building, One East Main Street, Fort Wayne, Indiana 46802

### **Consideration of Factors Outlined in Indiana Code 13-14-8-4**

Indiana Code 13-14-8-4 requires that in adopting rules and establishing standards, the board shall take into account the following:

- 1) All existing physical conditions and the character of the area affected.
- 2) Past, present, and probable future uses of the area, including the character of the uses of surrounding areas.
- 3) Zoning classifications.
- 4) The nature of the existing air quality or existing water quality, as appropriate.
- 5) Technical feasibility, including the quality

conditions that could reasonably be achieved through coordinated control of all factors affecting the quality.

6) Economic reasonableness of measuring or reducing any particular type of pollution.

7) The right of all persons to an environment sufficiently uncontaminated as not to be injurious to:

(A) human, plant, animal, or aquatic life; or

(B) the reasonable enjoyment of life and property.

### **Consistency with Federal Requirements**

The amended rules will be consistent with federal regulations.

### **Rulemaking Process**

The first step in the rulemaking process is a first notice published in the *Indiana Register*. This includes a discussion of issues and opens a first comment period. The second notice is then published that contains the comments and the department's responses from the first comment period, a notice of first meeting/hearing, and the draft rule. The Water Pollution Control Board holds the first meeting/hearing and public comments are heard. The proposed rule is published in the *Indiana Register* after preliminary adoption along with a notice of second meeting/hearing. If the proposed rule is substantively different from the draft rule, a third comment period is required. The second public meeting/hearing is held and public comments are heard. Once final adoption occurs, the rule is reviewed for form and legality by the Attorney General, signed by the Governor, and becomes effective 30 days after filing with the Indiana Register.

### **IDEM Contact**

Additional information regarding this rulemaking action can be obtained from Lynn West, Rules, Outreach and Planning Section, Office of Land Quality, (317) 232-3593 or (800) 451-6027 (in Indiana).